SB CRIMINAL MISC. II BAIL APPLICATION NO.7518/2007
SAHEB SINGH VS. THE STATE OF RAJASTHAN.

DATE OF ORDER:- 28th November, 2007

HON'BLE MR. JUSTICE RAGHUVENDRA SINGH RATHAORE.

Mr. S.S.Sunda, for the petitioner.
Mr. Jainendra Jain, Public Prosecutor for the State.

Heard learned counsel for the parties and perused the material on record.

2. This second application for bail has been filed primarily on the ground that a compromise has been entered into between the parties. The earlier bail application was considered and decided by this Court on 1.10.2007.

3. Broadly speaking the facts of the case are that an incident took place on 19.06.2005 and the report came to be lodged by one Siya Ram on 20.06.2005. The petitioner had been named in the said report. Thereafter, the investigation commenced and the challan came to be filed on 15.7.2006 wherein the Investigating Agency had made eight persons as accused including the petitioner. As against the petitioner, the challan came to be filed under Section 299 Cr.P.C. Subsequently, the petitioner was arrested on 23.7.2007. According to

the petitioner, a supplementary challan has now been filed against the petitioner.

4. The prosecution case, against the petitioner, is that he was carrying a 'Sariya' and inflicted a blow on the head of Har Prasad. The injured Har Prasad had also corroborated the same in his statement under Section 161 of the Code of Criminal Procedure. The Medical Jurist had also opined about the said injury to be grievous in nature. The petitioner had filed second bail application before the court-below, on the basis of the compromise filed between the parties stating therein that injured Har Prasad has moved an application stating that he has entered into a compromise with the accused petitioner Saheb Singh. The said application came to be rejected by the learned Court-below on 23.10.2007. Hence, this application for bail has been filed before this Court.

5. Along with this second bail application, the petitioner has submitted a certified copy of the application filed by the injured Har Prasad, with a prayer that the bail application filed by the accused petitioner may be accepted. In the

application, he has stated that he has no objection in case, the bail is granted to the accused petitioner Saheb Singh.

6. Learned counsel for the petitioner has submitted that a compromise has been entered into between the parties and as such the accused may be enlarged on bail. He has relied upon the Judgments of this Court rendered in the Case title **Ram Kunwar Vs. State of Rajasthan, 2005(1) RCC 295; Ram Dayal @ Kalu vs. State of Rajasthan 2005(3) RCC 1454 and Satya Narain Vs. State of Rajasthan 2007(2) Cr.L.R. (Raj.)1300.**

7. The learned Public Prosecutor has opposed the bail application and supported the order impugned passed by the Court-below, on 23.10.2007.

8. I have given my thoughtful consideration to the submissions made by the rival parties and also perused the material on record. At the outset it may be said that the so called compromise or its copy has not been placed on record of this Court. The only document which has been filed by the petitioner, is the application of Har Prasad dated 16.10.2007 wherein he has requested that the bail may be granted to the accused petitioner. It is

note worthy that the said application does not seem to have been supported by any affidavit. Apart from it, the learned Court-below , in its order dated 23.10.2007 after taking into consideration the facts regarding the so called compromise, held that the charge-sheet against the petitioner has been filed on 17.10.2007, the case has been committed and the learned Committal Court had fixed the case for 31.10.2007 as the next date of hearing. Therefore, the learned Court-below has held that no compromise has been executed by the injured with the petitioner Saheb Singh.

9. So far as the aforesaid case law relied upon by the petitioner is concerned, it may be stated that in the case of Ram Kumar Vs. State (Supra), the injured had filed an affidavit in the trial Court admitting the compromise in the matter. Before the High Court, the learned Public Prosecutor had in that case admitted the facts regarding compromise. In the Case of Ram Dayal Vs. State (Supra), the name of the petitioner was not mentioned in the First Information Report, Parcha Bayan recorded under Section 161 Cr.P.C and even in the statement under Section 164 Cr.P.C. Of his son

of Ram Avtar. Further more, Chhitar had filed an affidavit to the effect that the petitioner was not present at the time of incident. In the case of Satyanarain vs. State (Supra), in the compromise which had been filed before the office of this Court , it was mentioned that he report in that case had been lodged on account of some misunderstanding and the incident as alleged did not take-place. Therefore, the facts of the aforesaid cases relied upon by the learned counsel for the petitioner are totally distinguishable from the facts of the present case.

10. In view of the fact that no compromise was filed before the Court-below, and, as such, it was held that the injured has not entered into any compromise with the petitioner and had found one of the basis, of rejection of the bail application by the order impugned dated 23.10.2007. Likewise, no compromise has been filed before this Court, though it is a question to be mooted as to what extent the same would be relevant for consideration by this Court while considering the bail application in the alleged offence inter-alia 307 IPC as the same is not compoundable. The only document filed before

this Court is the application of injured Har Prasad before the Court-below, wherein a request has been made by him that the petitioner may be released on bail.

11. In such view of the matter, I do not consider it just and reasonable to grant bail to the accused petitioner under Section 439 Cr.P.C. In this second bail application, more-over, there does not appear to be any substantial change in the circumstances of the case, which deserve consideration once again by this Court. However, in view of the aforesaid circumstances, it would be in the interest of justice to direct the trial Court to call Har Prasad and examine him as first witness as and when the trial commences.

12. Consequently, the bail application is hereby dismissed, with above directions.

(Raghuvendra S. Rathore),J.

Bhatt